IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9454 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHOK M SUDHALKAR - Petitioner(s)
Versus
DY SECRETARY - Respondent(s)

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Appearance :
MR DC SEJPAL for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/11/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order quashing and setting aside the notification of fixing the deemed date of the petitioner dated 24-1-1986 and also to quash and set aside the said notification and the subsequent effect

thereof in the seniority list of Geologist, Grade II dated 5-7-1994.

2. The facts narrated in the present Special Civil Application are that the petitioner was working as a Geologist, Grade II since 13-2-1973, when he was originally appointed as Junior Geologist, Grade III. That on 6-12-1982, a seniority list bearing No.3642 came to be published, wherein the petitioner's name included at serial No.18. That however, on 24-1-1986, the respondent passed a notification specifying the deemed date of 14 Geologists who were included in the seniority list published on 6-12-1982 and that his name appeared at serial No.13 in the notification, wherein his deemed date of promotion was dated 21-5-1981. It is submitted that in the said seniority list dated 6-12-1982, petitioner's name was after the name of one Shri AK Bhatnagar who was at serial No.17 and before one Shri SA Laghete who was at serial No.19. That the date of joining of the petitioner was 13-2-1973, whereas the said two persons' date of joining were 23-1-1973 and 5-4-1973 respectively. It is submitted that in view of the above, in the notification dated 24-1-1986, his name is shown after the name of one Shri MA Kirmani who was at serial No.24 in the seniority

list and whose date of joining is 20-6-1973. Thus, according to him, he was pushed back by seven numbers. It is submitted that immediately thereafter, petitioner forwarded a representation to the respondent on 8-2-1986 disputing his deemed date of promotion as on 21-5-1981. However, there was no response. Therefore, the petitioner again represented on 14-5-1986 which came to be rejected by the respondent by communication dated 4-8-1986. It is submitted that on the basis of the notification of deemed date dated 24-1-1986, the department issued seniority list for Geologist, Grade II on 5-7-1994 and in the said seniority list, name of the petitioner appears at serial No.57. Even at serial No.51 i.e. after the name of Shri AK Bhatnagar and thereafter, the petitioner has submitted the representation, however, there was no response and therefore, the petitioner has preferred present Special Civil Application.

3. Shri Sejpal, learned advocate appearing on behalf of the petitioner has vehemently submitted that in the seniority list published on 6-12-1982, the name of the petitioner was after Shri AK Bhatnagar i.e. at serial No.18 and the same was on the basis of date of joining and therefore, the notification dated 24-1-1986

mentioning the deemed date of promotion as 21-5-1981 and putting the petitioner behind/after one Shri MA Kirmani whose date of joining is after the petitioner i.e. 20-6-1973, is absolutely illegal. It is further submitted that consequently the seniority list was published on 5-7-1994 which was prepared on the basis of the aforesaid effective notification, is also required to be quashed and set aside.

4. Petition is opposed by Ms Kiran Pande, learned AGP. An affidavit-in-reply is filed on behalf of the respondents. It is submitted that the present Special Civil Application is required to be dismissed on the ground of delay and laches. It is also further submitted that even on merits also, the petitioner has no case as the post of the Geologist, Grade II was required to fill on the basis of seniority-cum-merits and that there were some adverse remarks against the petitioner. It is further submitted that considering the judgment of the learned Civil Judge, Rajkot passed in Civil Suit No.452 of 1979, the department was required to reconsider the decision of outright absorption of other Geologists and the Government called for the option and the petitioner and other junior Geologists submitted their option

showing their desire to be absorbed in the state service and therefore, the petitioner and other junior Geologists were treated as Government servant. It is further submitted that accordingly they were placed in the seniority list dated 6-12-1982. accordingly, the Government had decided to examine 20 junior Geologists including the petitioner for promotion and the meeting of DPC was held on 10-12-1983 who considered the cases of 17 junior Geologists for promotion to the post of Geologists Grade II and while considering the case of promotion, the committee has taken into consideration not only the length of service but the merits of the persons were also considered. It is further submitted that in view of the adverse remarks against the petitioner and the CRs for the period between 1-4-1978 to 6-11-1988 which were already communicated to the petitioner and the CRs were not satisfactory and during the period between 6-11-1978 and 20-12-1978, the remarks were “For acquiring technical ability more experience is required”. It is also further submitted that the GRs during the period of 2-12-1978 to 31-3-1979 and for earlier years were found average category. Considering the adverse remarks in the CRs, the DPC came to conclusion that Shri Sudhalkar, the petitioner does not satisfy the requirement for promotion

to the post of Geologists, Grade II and therefore, his name for the promotion to the post of Geologist, Grade II was recommended after 1-4-1981 i.e. on 21-5-1981 and recommended to assign the deemed dated of 21-5-1981. It is also further submitted that consent of GPSC was also received and accordingly there is no illegality committed in giving deemed date of promotion as 21-5-1981. It is also further submitted that the present Special Civil Application is also required to be dismissed on the ground of non joining of proper and affected party as the petitioner has challenged the seniority list of 1994 and once his name is to be placed above seven members, the other seven employees who were above the petitioner will be affected and they are required to be heard before quashing and setting aside the seniority list of 1994 and/or putting the petitioner above, the above seven members in the seniority list of 1994. Therefore, it is requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on behalf of the parties.

6. At the outset, it is required to be noted that in

the Special Civil Application, the petitioner has challenged the notification dated 24-1-1986 fixing the deemed date of promotion of the petitioner as 21-5-1981 and the present Special Civil Application has been filed in 1996. It is required to be noted that even the representation submitted by the petitioner against the said notification dated 24-1-1986 was rejected by the department on 4-8-1986. Under the circumstances, the present Special Civil Application is required to be dismissed on the ground of delay and laches.

7. It is to be noted in the present Special Civil Application the petitioner has also challenged his placement in the seniority list of 5-7-1994 and the contention of the petitioner is that he is required to be placed in the said seniority list above other seven persons. Apart from the fact that the seniority list dated 5-7-1994 is based upon the notification dated 24-1-1986 which has never been challenged by the petitioner till 1996, if the aforesaid prayers and relief is granted, then other seven employees who are above the petitioner in the seniority list of 1994 are likely to be affected and the petitioner is required to be placed above those seven persons who are not joined as party to

the present proceedings. It is cardinal principles of law that if any order is passed and the other persons are likely to be affected and they are not joined as party respondents and/or they are not heard, no order adverse to them can be passed. As stated above, the petitioner has not joined all those persons who are likely to be affected and under the circumstances also the petitioner is not entitled to any relief as prayed for. Even, otherwise on merits considering the affidavit-in-reply, the case of the petitioner was considered by the DPC and after considering the various CRs and the adverse remarks, the DPC considered the case of the petitioner accordingly and considering deemed date of promotion as on 21-5-1981, the impugned notification came to be issued and the same was also subsequently got approved by the GPSC. Considering the above, if the date of promotion is fixed on 21-5-1981, it cannot be said that there is any illegality committed by the respondent.

8. For the reasons stated above, there is no substance in the present Special Civil Application and is required to be dismissed and is accordingly dismissed. Rule discharged. No costs.

(M.R.SHAH,J.)

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